

### REMARKS

Claims 71-100 remain pending and stand withdrawn from consideration as being directed to a non-elected invention. Applicants respectfully traverse the Office Action's withdrawal of claims 71-100 from consideration on the merits.

The Office Action asserts that claims 71-100 are directed to an invention that is independent or distinct from the invention as claimed in previously-prosecuted claims 31-50 and 70.<sup>2</sup> The only basis given for the Office Action's assertion is that claims 71-100 "are directed to a package and method of making a package where[as] the previous claims were directed to a film."

The Office Action reaches an erroneous conclusion that claims 71-100 relate to an independent or distinct invention based on a shortsighted reading of the claim preambles. Although claims 31-50 and 70 refer to a "flexible thermoplastic polymeric film," these claims define features of the same article of manufacture, i.e., a package, that is claimed in claims 71 *et seq.* and described in the specification. In other words, claims 71-100 and claims 31-50 and 70 provide different definitions of the same disclosed subject matter, varying only in scope or breadth. M.P.E.P. § 806.03 explains that a restriction is not proper in such a circumstance:

Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, **restriction therebetween should never be required**. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition. (emphasis added)

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<sup>2</sup> The Office Action actually asserts that claims 71-100 are independent or distinct from the "originally claimed" invention. Applicants note that claims 71-100 are identical to originally filed claims 1-30, whereas the previously prosecuted claims (claims 31-50 and 70) were added by preliminary amendment.

For at least these reasons, the Office Action has not demonstrated that claims 71-100 are patentably distinct from claims 31-50 and 70. Accordingly, it is respectfully requested that claims 71-100 be examined on the merits in the next Office Action.

The Examiner is invited to telephone the undersigned at the number listed below if doing so would be helpful to resolve any outstanding issues.

Respectfully submitted,

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